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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

Interference with or Control of Management of a Corporation by Courts of State other than That of the Corporation's Domicile

Mr. Justice Butler in the prevailing opinion in *Rogers v. Guaranty Trust Co. et al.*, decided January 23, 1933, by the United States Supreme Court, says (see also herein at page 343, under "New Jersey"): "It has long been settled doctrine that a court—state or federal—sitting in one State will as a general rule decline to interfere with or control by injunction or otherwise the management of the internal affairs of a corporation organized under the laws of another State but will leave controversies as to such matters to the courts of the State of the domicile. Obviously no definite rule of general application can be formulated by which it may be determined under what circumstances a court will assume jurisdiction of stockholders' suits relating to the conduct of internal affairs of foreign corporations. But it safely may be said that jurisdiction will be declined whenever considerations of convenience, efficiency and justice point to the courts of the State of the domicile as appropriate tribunals for the determination of the particular case."

Kenneth Kingsley
President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose, is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for March

Foreign Corporation Selling Its Own Stock

Whether the mere sale of its own stock in a state will subject a corporation to the requirements of the foreign corporation laws has been considered in several cases. The general rule appears to be that where the activity of the corporation is strictly limited to such sales, the corporation is not "doing business" in the state so as to require its qualification. The reasoning upon which this is based is that the sale of stock is not a transaction of the business the corporation was organized to do, but a transaction incident to setting up a financial structure, through which such business may in fact be carried on.

A Michigan case, (*Edward v. Ioor,* 205 Mich. 617) makes the distinction between qualification by a foreign corporation in order to carry on its business and compliance with the so-called Blue Sky laws, to sell its stock or securities in the state. The court says that "Compliance with the Corporation Act permits a foreign corporation to 'carry on its business,' the business for which it is organized, in the state; compliance with the Commission Act permits it to sell its stock and other securities. One is not in any way dependent upon the other."

However, as must be with all general rules, there are exceptions. In Alabama it has been held that a sale of shares is transacting business so as to require a permit to do business in the state. Failure to obtain such permit renders a note given in payment for shares void and unenforceable, even in the hands of an innocent purchaser. (*Jones v. Martin,* 74 So. 761.)

A recent decision by the Supreme Court of Wisconsin (*American Timber Holding Co. v. Christensen,* 238 N. W. 897) places emphasis on the completion of the transaction without the state. The court says, "the law is established that the sale of its stock by a foreign and unlicensed corporation constitutes transacting business within this state, and that such a contract is one affecting the personal liability of such corporation"; but, "if, however, the sale of stock was not completed until accepted by the plaintiff in Minneapolis, it was then an interstate transaction, completed not within, but without the state, and was in all respects, including the note, a valid transaction."

To a newly organized corporation attempting to sell its shares in a particular state as an aid in the direction of setting up a financial structure through which it may do business, the question of the attitude of that state on this matter of "doing bu iness" is of sufficient importance to require consideration before the stock is sold, particularly in view of the possibility, otherwise, of finding itself possessed of non-enforceable notes and of void or voidable subscription contracts.

Domestic Corporations

Florida.

Stockholders secure injunction against corporation and its directors in direct action. The Florida Supreme Court affirms the order below issuing a temporary restraining order against a corporation and its officers and directors at the behest of certain stockholders. The sole point touched on here is that covered by that which follows. Equity will not open its doors to dissenting stockholders unless it be shown that there is no other road to redress, and this is not shown unless it be shown that all remedies within the corporation have been exhausted. It was not shown that the directors had been requested to seek the relief which the stockholders are now themselves seeking. But—"Dissenting stockholders may sue in their own name to enforce the rights of the corporation without a demand upon the directors if they, whether by reason of hostile interest or guilty participation in the wrongs complained of, cannot be expected to institute suit, or, if they do, it is apparent they will not be the proper parties to conduct the litigation." It is stated that "a request that the directors sue themselves would have been fruitless. Then, too, the court would not permit directors to conduct litigation against themselves even if they were willing to do so." On the contention that it should be shown that appeal was made to the stockholders to seek redress and that the stockholders had refused to take action the court points out that "in this state, the law provides that the business of every corporation shall be managed by a board of directors" to be chosen by the stockholders, etc. *Orlando Orange Groves Co. v. Hale*, 144 So. 674. Tilden & Hays, W. H. Poe, and Dickenson & Dickenson, for appellants; Crawford & Gaskin and E. W. & R. C. Davis, for appellees: all of Orlando.

Michigan.

Gift of corporation's shares of stock, no certificates issued or passing. Many questions are involved in this proceeding; we cover but one point. Each of two brothers (the Farbers) owned a large block of stock in a corporation but no certificates had been issued to evidence such ownership. The minutes of a stockholders meeting record that the brothers "agreed at this time to give" to one Lande and one Taft 500 shares of their individual holdings of the corporation's capital stock. Did Lande become a stockholder? The Supreme Court of Michigan answers the question affirmatively, saying: "that the Farbers intended the minutes of the stockholders' meeting to constitute a present conveyance of stock to Lande and Taft, and the latter so accepted it, is clear from the words of the minute 'at this time,' and because Lande and Taft were immediately recognized as stockholders by their being elected directors and by Taft seconding a motion, all with the participation of the legal advisor of the corporation. Because certificates for the Farber stock had never been is-

sued and the affairs of the corporation were conducted in an informal manner, the failure to issue formal certificates to Lande did not affect the transfer as between these litigants. We think the minutes of the meeting operated to transfer stock to Lande." *In re Farber et al.; Lande et al. v. J. E. Farber Co., Inc., et al.*, 245 N. W. 793. Wilson & Hoffman and C. M. Van Benschoten, all of Flint, for Lande. F. C. Cook and J. P. O'Hara, of Detroit, for others.

New Jersey.

Inquiry by New York courts on validity of dissolution of a New Jersey corporation. For the purposes of this digest let it suffice to say that it is alleged that a New York corporation was organized, that it used the assets and business of a New Jersey corporation to aid and subsidize itself, that the assets, business and good will of the one corporation were transferred to the other for an inadequate consideration, that the New Jersey corporation was dissolved, facts being fraudulently withheld from the New Jersey secretary of state, —"with the result that all value was destroyed of the stock of the plaintiff in the New Jersey corporation." Prayer for voiding of the dissolution and for certain other relief "which this court may not be able to grant directly." Judgment below dismissing the complaint is reversed by the New York Supreme Court, Appellate Division, First Department, "and motion to dismiss denied, with leave to defendants-respondents to answer." The court says, in part: "The action (against the New York corporation and the directors of the New Jersey corporation) however, is based upon alleged fraud of fiduciaries, and the main purpose of the action is to conserve the assets of the corporation while compelling an accounting and a restoration for the benefit of the stockholders. The other relief asked is but incidental to this purpose. All the defendants are before this court and all the assets are within its jurisdiction. The court is thus in a position to render an effective judgment in personam as well as in rem. Under such circumstances there is no valid reason for denying relief to the plaintiff. * * * The courts of this state thus having jurisdiction because of the presence here of the parties and the property may inquire incidentally into the validity of the dissolution, and the fact of such dissolution is not in itself a bar to this action, the basis of which is fraud. * * * The complaint therefore states a good cause of action. * * *." *Hamm v. Christian Herald Association, Inc.*, 260 N. Y. Sup. 743. Cornelius J. Smyth, of New York City, for appellant. Gwinn & Pell, of New York City (John B. Butler, Jr., of New York City, of counsel; Caleb C. Curtis, of New York City, on the brief), for respondents.

Suit in New York courts by stockholder of New Jersey corporation attacking an allegedly illegal "plan" (change in capital structure, stock allotted to employees for purchase, etc.) adopted by the corporation. This is The American Tobacco Company Case. The cause (object as indicated by the caption hereto) having been re-

moved from a New York state court to a United States District Court, in New York, such court "in the exercise of its discretion" (The American Tobacco Company being a New Jersey corporation) dismissed the bills of complaint "without prejudice to the enforcement of the rights of plaintiff, if any, in the courts of New Jersey." The United States Circuit Court of Appeals considering and deciding the merits sustained the "plan" and affirmed the judgment of dismissal but directed the District Court to enter a decree dismissing the bills with costs. On January 23, 1933, the United States Supreme Court being of the opinion that all questions relating to the validity of the "plan" may be "conveniently and effectively determined in New Jersey courts, the authoritative and final interpreters of the statutes of that State" holds that the facts and circumstances disclosed by the record "abundantly justify the exercise of discretion on the part of the district court in dismissing the bills of complaint without prejudice" and so the judgment of the Circuit Court of Appeals is reversed and the judgment of the district court entered on its mandate is vacated and the case is ordered "remanded to the district court with directions to reinstate its earlier judgment dismissing the bills of complaint without prejudice." (See matter on the front cover of this issue of The Journal.) Three Justices, of whom one was Mr. Justice Stone, were of the opinion that the cause should be remanded to the New York District Court for a determination of the merits. In the course of his opinion Justice Stone says: "This is the first time that this Court has held that a federal court should decline to hear a case on the ground that it concerns the internal affairs of a corporation foreign to the state in which it sits. We may assume, without deciding, that neither a federal nor a state court of equity will, as a general rule, undertake to administer the internal affairs of a foreign corporation. * * * We are presented with no problem of administration. * * * If there were any principle of federal jurisprudence, generally applicable, that in cases between private parties federal courts of equity may, in their discretion, decline jurisdiction because called upon to decide an unsettled question of state law, I would willingly acquiesce in declining it here. But this Court has not declared such a principle and does not recognize it now. On the contrary, * * *." *Rogers v. Guaranty Trust Co. et al.*, U. S. Supreme Court, Docket No. 227, October Term, 1932.

New York.

Rights to stolen stock certificate and the shares represented thereby. A certificate of stock was endorsed in blank by the stockholder and delivered for value to a New York purchaser. The certificate was then stolen, the original stockholder's name and the endorsement were erased, a new name as stockholder was written in and a new endorsement in blank made accordingly, and the certificate thus changed was pledged with another in Illinois, who received it for value in good faith and without notice or knowledge of the theft or

alteration. In an action to determine ownership, between two insurance companies respectively subrogated to the rights of the Illinois pledgee and the New York purchaser, the New York Supreme Court, Appellate Division, First Department, decides that all right and title to the shares involved and to all accrued and unpaid dividends thereon are in the subrogated insurer of the New York purchaser. The court says that "under the rule as it existed at common law, the true owner of a stock certificate could not be deprived of his title by theft, whether or not followed, as here, by a forgery upon such certificate and the later delivery by the thief to a bona fide purchaser. The enactment of the Uniform Stock Transfer Act [this Act in identical terms has been adopted by New York and Illinois] has not changed that rule." The provision of the Uniform Stock Transfer Act relied on by the plaintiff (the pledgee's insurance company) reads as follows: "The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby." The court says: "The word 'transferee' as used in that section means, of course, the transferee from the actual owner, not from the thief." *National Surety Co. v. Indemnity Ins. Co. of N. A.* and *Bankers Trust Co.*, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 81020. Stewart Maurice, of New York City, for plaintiff. Walter & Wolff, of New York City (Alfred A. Walter, of counsel), for defendant.

Texas.

"Right to do business forfeited" does not ipso facto forfeit charter. The Texas Court of Civil Appeals (Eastland) reverses the court below, in this case, on the ground that the lower court had refused to permit the filing of a plea in abatement, based on the fact that the plaintiff corporation had not paid its franchise tax, and so, the "right to do business forfeited" having been entered on the corporation's record in the office of the Secretary of State, it was denied the right to sue or defend in the state courts, "except in a suit to forfeit the charter of such corporation" (Article 7091, R. S. 1925). Rehearing denied. This digest does not go beyond the foregoing and certain remarks of the court in connection therewith. The court says: "Thus we have before us the situation of a private domestic corporation, defaulting in the payment of a franchise tax, but still in existence as a legal entity, without the right to sue or seek affirmative relief in our courts * * *. Further, it will be observed that the case before us does not present one involving the rights or powers of the directors and managers of a legally dissolved corporation to settle the affairs thereof. Article 1388, R. S. 1925. The failure to pay the franchise tax has repeatedly been held not an act of dissolution * * *. This observation is made in view of the fact that there seems to be a contention presented here that

the plaintiff's default in payment of taxes forfeited its charter." *Stephens County v. J. N. McCammon, Inc.*, 54 S. W. (2d) 880. T. B. Ridgell, W. J. Arrington, and L. D. Hawkins, all of Breckenridge, for appellant. Goggans & Allison, of Dallas, for appellee.

Foreign Corporations

District of Columbia.

Foreign corporation (newspaper) having news collecting instrumentalities, merely, in Washington, is not "doing business" in the District of Columbia. The Philadelphia Inquirer, the publisher being a Delaware corporation, maintains a Washington, D. C., office, in charge of a correspondent, the sole function and duty of the office being the collection of news and the transmission of such to the paper in Philadelphia for publication there. In an action of tort against the paper summons was served on the Washington correspondent. Unless the company was doing business in the District the service was without force. The Court of Appeals of the District of Columbia, affirming the order below quashing process, thinks that "the mere collection of news material here for use in subsequent publication elsewhere, in the manner and extent shown in this case, is not a doing of business here, within the meaning of the statute. * * * If the employment of a Washington correspondent, the announcement of his address, and the payment of his office rent, subjects a non-resident newspaper corporation to legal process in Washington for matter appearing in its paper at home, it would bring in nearly every important newspaper in the nation, and many foreign publishing corporations, which in our opinion the present statute does not do." *Neely v. Philadelphia Inquirer Co.*, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 79302. T. Morris Wampler, and Joseph C. Turco, both of Washington, for appellant. Frank J. Hogan, Edmund L. Jones and John W. Guider, all of Washington, for appellee.

Michigan.

Service of process on behalf of foreign corporation on selling solicitor having representative capacity. Defendant here is a Wisconsin corporation, not authorized to do business in Michigan. Action for damages on account of injuries claimed to have been received due to the defendant's alleged negligence. Summons was served on one of defendant's soliciting salesmen, who, it was evidenced, in addition to procuring orders (which were always sent to the home office for acceptance or rejection), sometimes made collections, adjusted differences, subject to the company's ratification, and on occasion filled intermediate emergency orders from supplies kept by him at his home or procured from other of his customers (the billing still being done by the home office). Service held good; on appeal the Michigan Supreme Court affirms the order below denying the

motion to dismiss. The Michigan statute provides in the case of suits against a foreign corporation for service of process on any officer or agent of the corporation within the state, "and any person representing such corporation in any capacity, shall be deemed an agent within the meaning of this section." The court says: "Had Oman (the solicitor referred to above) been merely an agent soliciting business for the defendant in this state, a different question would be presented." And continuing, after reciting the activities other than mere soliciting engaged in by the salesman, as stated above,—"Clearly he was a representative of the company in this state, and service upon him was service upon the company." *Cheli v. Cudahy Bros. Co. et al.*, 245 N. W. 503. Ray E. MacAllister, of Iron Mountain, for appellant. Derham & Derham, of Iron Mountain, and Daniel J. O'Hara, of Lansing, for appellee.

New Jersey.

New Jersey court gives "full faith and credit" to judgment of New York court in favor of New York state in a tax case brought against a New Jersey corporation. In a suit brought in the New York Supreme Court, Albany County, by the state of New York against a New Jersey corporation for collection of a franchise tax, for which, allegedly, it became liable by virtue of its doing business in New York state, judgment went for the state. The present action in the New Jersey Supreme Court, Bergen County, by New York State against the New Jersey corporation, is founded on the judgment referred to. The court holds that the New York judgment entered "is entitled to full faith and credit in this court." It is said: "Of course, if this were an original suit for the collection of taxes due to the State of New York the plaintiff would be without relief, because the principle is well settled without the need of citation, that the courts of one state will not enforce a claim for taxes as such in any other jurisdiction than that in which the taxes are due." However, "As I view the matter the suit in this Court is not for the collection of taxes, but for the collection of a judgment which is based on a tax claim, and the original character of the claim has been merged in the judgment." And—"The defendant in this cause can make no claim under the exceptions in our Evidence Act because as stipulated and as evidenced by the exemplified judgment roll it submitted itself to the jurisdiction of the New York court. If it felt aggrieved by the ruling of the trial judge it could have applied to the court of last resort in the State of New York." *State of New York v. Coe Manufacturing Company*, a New Jersey corporation. Leon R. Jillson, New York, N. Y., appeared for the defendant.

New York.

"Managing agent" for purposes of service of process on a foreign corporation. In an action at law brought by a California corporation against a British company in a New York state court, process

Transferring 6,040,789 S

Few corporations will ever require from a transfer agent the performance of such a job as has just been performed for Radio Corporation of America by its transfer agent, The Corporation Trust Company.

Under the consent decree agreed to by the United States Government, Radio Corporation of America, General Electric Company and Westinghouse Electric & Manufacturing Company, the two latter corporations divested themselves in one gigantic transaction of substantially one-half of their holdings of the common stock of Radio.

Over 238,000 new stock certificates had to be issued, checked against the Radio Corporation's stock books and new stock ledger accounts opened and new addressograph stencils cut and filed for those not already on the books, and postings made of all others.

238,000 new certificates had to be assembled and matched with their proper envelopes and 234,000 net pieces of mail registered at the Post Office.

$55,000 in round figures was required for postage and postal registration fees, and $241,631.28 was required for revenue tax stamps.

Such was the job, one of the largest in the history of corporations, completed on time for Radio Corporation by its transfer agent, The Corporation Trust Company.

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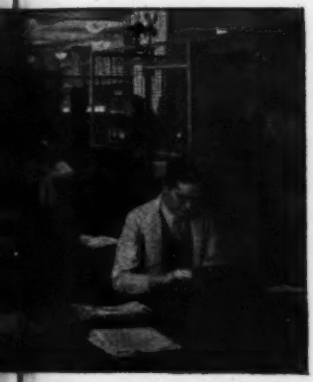
9 Shares of Radio Stock



Have you a good transfer agent for *your* company's stock?

was served on behalf of the alien corporation on one of its New York agents who is held by the United States Circuit Court of Appeals, Second Circuit, to have been sufficiently a "managing agent" within the purview of the statute relating to service on foreign corporations to render the service good, thus reversing the United States District Court to which the cause had been removed. After stating that "in an action at law we follow state practice in this," the court says: "None of the decisions in the Court of Appeals or in the Appellate Divisions help us much here, as is so often the case when a colloquial phrase comes up for interpretation; as for example, the issue of a corporation's 'presence' within the state. Being unwilling to commit themselves to an inflexible premiss courts are thrown back in each case upon the situation as a whole which happens to be before them, and merely summarize the details. It is usually safer to abandon the pretence of deductive reasoning, and have recourse to more naive impressions; to accept the phrase with its fringe of implication, and try to learn whether a particular complex is within it. In the end a vague concept may emerge, but scarcely a rule." In reversing, the court does so "without prejudice" to the defendant's right, when the cause comes on in the District Court, to raise the question—"Whether it was not an undue restraint upon foreign commerce to compel it to try in New York a cause of action not arising out of, or connected with, any business done there." *U. S. Merchants' and Shippers' Ins. Co. v. Elder Dempster & Co., Limited, et al.*, 62 F. (2d) 59. Single & Hill, of New York City (Wilmer H. Eberly, of New York City, of counsel), for appellant. Haight, Smith, Griffin & Deming, of New York City (Wharton Poor and H. M. Statt, New York City, of counsel), for appellees.

Texas.

Exhibiting in local theaters in addition to furnishing advertising motion picture films constitutes doing business. A Colorado corporation, not licensed to do business in Texas, contracted with a resident of Texas to supply motion picture advertising films and to procure the exhibition of these in certain named Texas theaters. The order was taken in Texas by one of the corporation's solicitors. The contract was accepted in Colorado, from which state shipment to the exhibiting theaters was made. The film company had a separate contract with the theaters covering the showing of the pictures, to which separate contract the purchaser of the advertising was not a party. In a suit brought by the film company on the advertising contract defendant's plea in abatement, on the ground of noncompliance with the foreign corporation laws of the state, was sustained by the county court; the Court of Civil Appeals reversed that judgment; the Texas Supreme Court now reverses the latter and affirms the county court's judgment, as recommended by the Texas Commission of Appeals, Section A. The court says that if the busi-

ness done stopped with the taking of the order, closing the contract, and shipping the films into the state for independent exhibition there, interstate commerce only would be involved,—but, "it is perfectly plain that the contract between the film company and the advertiser contemplated, as the main object of the company's entire undertaking, the public exhibition of the films in the theaters. The matter of publicly exhibiting the films was essentially intrastate business." The interstate business is held to have been incidental merely to that which was clearly intrastate, namely, the public exhibition of the advertising matter contained in the film. *H. L. Ligon v. Alexander Film Company,* Commerce Clearing House Court Decisions Reporting Service, Requisition No. 80236.

Washington.

Stockholders of unlicensed foreign corporation doing business in Washington not copartners for purposes of action against them for money alleged to be due on account of the corporation's Washington business. After negotiations between plaintiff-respondent, here, and certain stockholders of American Tile Company, an Oregon corporation, not licensed to do business in Washington, the corporation authorized or sanctioned the opening of a Seattle office (the Oregon company was lessee) by plaintiff-respondent, under the name of Hereford Tile Company (a trade-name merely), for the sale of the Oregon company's wares. Action against the individual stockholders for salary and cash advances, in connection with the operation of the Seattle office, alleged to be due. "Respondent contended that appellants were copartners doing business as Hereford Tile Company, and that they, as individuals, are indebted to him, as found by the trial court." Reversing, with directions that the action be dismissed, the Supreme Court of Washington says: "While American Tile Company, an Oregon corporation, had no right to engage in business in the state of Washington, the state took no steps to interfere with its proceedings, and we are unable to hold that the fact that the American Tile Company was engaged in business in this state without authority gave respondent any rights against appellants, as individuals. The evidence preponderates against the finding of the trial court to the effect that appellants hired respondent or individually became indebted to him." *Donald v. Feehely et al.,* 16 P. (2d) 616. Bronson, Jones & Bronson and W. L. Grill, all of Seattle, for appellants.

Taxation

Louisiana.

Corporation not exempt from taxation under constitutional provision exempting from tax "those engaged in mechanical pursuits." The Louisiana constitution authorizes the imposition of license taxes on individuals and corporations pursuing any trade, business,

etc., as elected by the Legislature except, among others, those engaged in mechanical pursuits. Under authority of a legislative act, a license tax was imposed on a corporation engaged in the shoe-repairing business. Pleading the exception carried in the constitutional provision above referred to the corporation claimed exemption which claim was sustained in the trial court. The Louisiana Supreme Court reverses, holding the appellee liable to the license tax. The court says that "a corporation cannot possibly perform manual labor in mechanical pursuits"; mechanic-employees may do the work necessary to carry on a corporation's business but it is the employer corporation that is actually engaged in operating the business rather than the employee-mechanics; the exemption runs to the certain specifically named classes, all natural persons, and also to those (still natural persons, so the court rules) engaged in mechanical pursuits. *State v. Up-To-Date Shoe Repairing Co.*, 144 So. 714. Charles J. Rivet, of New Orleans, for the State. Jesse Chandler McGee, of New Orleans, for appellee.

Minnesota.

On the continuity of an interstate shipment of goods for purposes of the exemption from local personal property tax thereon afforded by the Commerce Clause of the Federal Constitution. On May 1, 1929 (Minnesota's personal property assessment day) certain cattle recently shipped in from without the state were in the South St. Paul stockyards, the property of a registered trader; some were sold the same day and some the next day, all for shipment to purchasers at points without Minnesota, which was immediately effected. The state brought this action (in part) to enforce its claim against the trader for personal property tax in respect of these cattle. Had the cattle come to rest in Minnesota for purposes of personal property taxes therein? "The defendant contends that these cattle, when in the yards on May 1, were in the flow or current of interstate commerce, and that consequently a personal property tax levied on them as of the 1st day of May is a burden upon interstate commerce, and that the state taxing power must yield to the paramount interests of that commerce." The Supreme Court of Minnesota reversing the court below, to this extent, says that "there seems to us to be a distinct trend in the decisions of the United States Supreme Court toward a more liberal construction of what constitutes interstate commerce and toward the exemption from local taxation of property in the current of that commerce" and decides that "in the light of the views expressed by the Supreme Court in *Stafford v. Wallace* (258 U. S. 495) and in the *Swift & Company* Case (196 U. S. 375), it is our opinion that the learned trial court erred in holding that these cattle had sufficiently come to rest to subject them to the taxing power of the state." *State v. Blasius*, 245 N. W. 612. D. L. Grannis, of South St. Paul, for appellant. H. E. Stassen, Co. Atty., of South St. Paul (Charles P. Stone, of Minneapolis, of counsel), for the State.

Virginia.

A domestic corporation engaged in interstate commerce solely is not subject to either the Virginia income tax or capital tax. A Virginia corporation, with its principal office in that state, acts as sales agent for several West Virginia coal companies, entering into contracts for the sale of coal (the purchaser in every case knowing who is the principal), directing the shipping, in car load lots, collecting the selling price and remitting such to the principal, less commission, and advancing payment for the coal sold if there be delay in payment on the part of the purchaser. The corporation income tax (Section 52 of the Tax Code) is based on net income "derived from business done, property located or sources in this state." The Virginia Supreme Court of Appeals, affirming the judgment below, holds that the business done in Virginia by the sales company is interstate in character, such local activities as are engaged in by it being incidental merely to the interstate commerce, and "therefore, authority for the imposition of the income tax in controversy, cannot be found in Sec. 52 of the Tax Code, under which the present assessment for income was made." On the capital tax question (Sec. 73 of the Tax Code): Seemingly, when read with other statutory provisions, the design of the section is to impose a tax on intangible personalty, only, used in business, but the provisions are not entirely clear;—however, the court finds it "unnecessary to pass upon the construction of Sec. 73," since, so it holds, in the present case, in a long opinion, as all of the sales company's property in Virginia, with exceptions too minor to be noticed, is intangible personalty, as the assessment was made on intangible property only, and as the corporation was engaged in interstate commerce only, the imposition of the tax is a burden on interstate commerce and contravenes the Commerce Clause of the United States Constitution. In a dissenting opinion (to extent of this latter phase) it is said, in part: "Upon principle, I think such a holding is unsound, and stretches the compass, operation and effect of the Commerce Clause far beyond its original intendment. * * * It is true that it [i. e. the United States Supreme Court] has exercised an ingenuity in stretching the compass of this clause which in some instances rivals the ingenuity shown by Queen Dido in stretching the compass of her ox hide; and it may be that this court is correct in its surmise that the Supreme Court of the United States will hold that the mere fact that intangible personal property is used in carrying on interstate business wholly exempts it from any State property tax. As to this I do not essay to prophecy; but until it does so hold, pointedly and unequivocally, I think this court should adhere to principle and not so hold." *Va. v. Imperial Coal Sales Co.*, Commerce Clearing House Court Decisions Reporting Service, Req. No. 81024.

Wisconsin.

Chain stores; filling stations. Original action in the Wisconsin Supreme Court to recover annual license fees exacted under the

Wisconsin emergency chain store licensing act (progressively increasing rates, based on number of stores operated), Chapter 29, Laws of 1931, Special Session, brought by an oil company that (1) operates a large number of filling stations (oil "gas," etc.) and (2) is lessor of numerous pieces of real estate on which filling stations are conducted, such businesses being owned, maintained, and operated by the respective lessees. Complaint dismissed for want of original jurisdiction—several of the lower courts being open to the complaint; "principal among those courts is the circuit court." However—the court considers that it "should state its view of the law somewhat in the nature of an advisory opinion." The statute defines chain store business, subject to license, as the operating, etc., under the same management, ownership, etc., of "two or more stores or mercantile establishments where goods, wares or merchandise are sold or offered for sale at retail." In its consideration of the question the court says that "in common language a filling station is not referred to as a store or a mercantile establishment where goods, wares, or merchandise are sold or offered for sale at retail," and concludes "that establishments of the kind described in the complaint are not within the terms of the act and that the plaintiff is entitled to recover the moneys paid under the act." *Wadhams Oil Co. v. State,* 245 N. W. 646. Fish, Marshutz & Hoffman, of Milwaukee (I. A. Fish, J. H. Marshutz, and W. H. Voss, all of Milwaukee, of counsel), for plaintiff. John W. Reynolds, Atty. Gen. and Herbert H. Naujoks, Asst. Atty. Gen., for the State. H. H. Thomas and Olin & Butler, all of Madison, amici curiae. Rehearing denied, Feb. 7, 1933. C. C. H. Court Decisions Reporting Service, Req. No. 78300A.

CORPORATE MEETINGS HELD

During the past few weeks meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

National Sugar Refining Company
Southern Light & Traction Co.
Penn Dairies, Inc.
Good Humor Corporation
Graymur Corporation
Union Steamship Company
Wilson & Co.
The Atwood Machine Company
Adolph-Gobel, Inc.
National Folding Box Company
United States Gypsum Company
Marshall-Wells Company
Columbia Baking Company
Kelsey Hayes Wheel Corporation
The Credit Clearing House
Hat Corporation of America
Whitehead Brothers Company
Lehigh Valley Coal Sales Co.
Great Lakes Towing Company
Remington Arms Co., Inc.
United New Jersey Sandy Hook Pilots Association
Triplex Safety Glass Company of North America
American Seal Kap Corporation of Delaware
B. F. Schlesinger & Sons, Incorporated

Some Important Matters for March and April

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax payable April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corps.

ARIZONA—Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

CALIFORNIA—Franchise (Income) Tax Return and Payment of one-half of tax due on or before March 15. (Note: A general extension of 30 days has been granted for the filing of this report and the payment of the tax in 1933 by Laws of 1933, Assembly Bill No. 438.)—Domestic and Foreign Corporations.

COLORADO—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

CONNECTICUT—Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due after April 1 and before July 1. —Domestic Corporations.

Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations making payments of dividends, interest or other income to any citizen or resident of Delaware aggregating $1,000 or more during 1932.

DOMINION OF CANADA—Return of Employers and return of dividends for income tax purposes due on or before March 31.—Domestic and Foreign Corporations.

Annual Income Tax Return due on or before April 30.—Domestic and Foreign Corporations.

Annual Summary due between April 1 and June 1.—Domestic Companies.

GEORGIA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corps.

IDAHO—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corps.

KANSAS—Annual Report and Franchise Tax due on or before March 31. —Domestic and Foreign Corporations.

MARYLAND—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Excise Tax Return due between April 1 and April 10.—Domestic and Foreign Corporations.

MINNESOTA—Annual Net Income Information Report due on or before April 1.—Domestic and Foreign Corporations having their actual and principal places of business in Minnesota.

MISSISSIPPI—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

MISSOURI—Annual Return of Net Income due on or before March 15. —Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.— Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15. —Foreign Corporations.

NEVADA—Annual Statement of Business due not later than month of March.—Foreign Corporations.

NEW HAMPSHIRE—Annual Return due on or before April 1.—Domestic and Foreign Corporations.
Franchise Tax due on or before April 1.—Domestic Corps.

NEW YORK—Annual Franchise Tax (under Art. 9 of New York Tax Law) payable on or before April 1.—Domestic and Foreign Real Estate Corporations and Holding Corporations.
Return of Information at the source due on or before April 15. —Domestic and Foreign Corporations.

NORTH CAROLINA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
Annual Report due on or before May 1.—Domestic Corps.

NORTH DAKOTA—Annual Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

OHIO—Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.
Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.

OKLAHOMA—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OREGON—Combined Excise (Income) Tax and Intangibles Income Tax Return due on or before March 31.—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock and Corporate Loans Report due on or before March 15.—Domestic and Foreign Corporations.

Bonus Report due on or before March 15.—Foreign Corps.

RHODE ISLAND—Semi-Annual Report to Chief Factory Inspector due in April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

SOUTH CAROLINA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

TENNESSEE—Annual Return of Supplemental Information due on or before March 15.—Domestic and Foreign Corporations other than mercantile corporations.

Annual Excise Tax Report due on or before May 1.—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

UNITED STATES—Annual Return of Net Income due on or before March 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

UTAH—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

VERMONT—Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.

List of Stockholders due on or before April 5.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

VIRGINIA—Income Tax Return and Return of Information at the source due on or before April 15.—Domestic and Foreign Corporations.

WASHINGTON—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

WEST VIRGINIA—Annual License Tax Report due in April.—Foreign Corporations.

WISCONSIN—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Amateur Corporate Representation. A booklet dealing with some of the weaknesses of placing a company's statutory representation in the hands of business employes or others not trained in the matters involved.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1931.

Incorporation in Canada Under the Dominion Act. Explains the procedure for incorporation of Canadian companies, the requirements, taxes, maintenance of office, etc., and all the special features of the Dominion Companies Act. Attorneys with a client who may, because of tariff barriers, be considering the organization of a Canadian company to conduct the company's Canadian or export business, will find this pamphlet extremely useful.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

What Constitutes Doing Business. (Revised to April, 1930.) A 208-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Why Corporations Leave Home. This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.